APPEAL NO. 022248
FILED OCTOBER 16, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on August 1, 2002. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) corresponding to the first compensable quarter. The claimant appeals this determination. The respondent (carrier) urges affirmance.

DECISION

We affirm.

The hearing officer did not err in determining that the claimant is not entitled to SIBs based on having a total inability to work during the qualifying period corresponding to the first compensable quarter. Section 408.142(a) outlines the requirements for SIBs eligibility as follows:

> An employee is entitled to [SIBs] if on the expiration of the impairment income benefit [IIBs] period computed under Section 408.121(a)(1) the employee:
>
> (1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury;
>
> (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;
>
> (3) has not elected to commute a portion of the [IIBs] under Section 408.128; and
>
> (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4) states that the "good faith" criterion will be met if the employee:

> has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

While we note the claimant's argument on appeal that he is entitled to SIBs because he had not been returned to work by his doctor during the qualifying period, in order to prevail on a "no ability to work" theory, the claimant must produce a narrative, which complies with the requirements of Rule 130.102(d)(4). A finding of no ability to work is a factual determination for the hearing officer to resolve and is subject to reversal on appeal only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Texas Workers' Compensation Commission Appeal No. 951204, decided September 6, 1995; Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). The hearing officer could find from the evidence that the narratives provided by the claimant did not specifically explain why he could not work at all. In the alternative, the claimant contended that he was working at a position relatively equal to his ability to work. The hearing officer also did not err in determining that, during the qualifying period in question, the claimant did not return to work in a position which is relatively equal to his ability to work. Rule 130.102(d)(1). To the extent that the hearing officer found that the claimant was employed, there was evidence that he worked only a few hours each day, and the hearing officer found that he was not restricted to part-time work, only. Applying Rule 130.102(d), we find no grounds upon which to reverse the decision of the hearing officer.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **THE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

DOROTHY C. LEADERER
1999 BRYAN STREET
DALLAS, TEXAS 75201.

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Judy L. S. Barnes
Appeals Judge

CONCUR:

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Thomas A. Knapp
Appeals Judge

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Philip F. O'Neill
Appeals Judge